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OFFICE OF PETITIONS

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In re Patent No. 7,597,886 : CORRECTED DECISION ON REQUEST
Yu et al. : FOR
Issue Date: October 6, 2009 : RECONSIDERATION OF
Application No. 09/899,059 : PATENT TERM ADJUSTMENT
Filed: July 6, 2001 : and
Atty Docket No. 075977-0122 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

A petition pursuant to 37 C.F.R. § 1.705(b) was filed on December 4, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand and thirty-five (2035) days. A decision was mailed on September 7, 2010, which indicated that the petition was granted to the extent that the patent term is extended or adjusted by one thousand, eight hundred and sixty-one (1861) days.

The decision set forth, *in pertinent part*:

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on May 22, 2009 and a notice of allowance was subsequently mailed on June 23, 2009 (emphasis added). The 33 days of the over three year period consumed by appellate review, beginning on May 22, 2009 and ending on June 23, 2009, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 33 days are excluded.

Patentee telephoned Paul Shanoski on September 17, 2010, and indicated that the notice of allowance was mailed not on July 23, 2009, but rather on May 27, 2009. A review of the electronic record establishes that this assertion is accurate.

It follows that the above-reproduced paragraph should have read as follows:

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on May 22, 2009 and a notice of allowance was subsequently mailed on May 27, 2009. The 6 days of the over three year period consumed by appellate review, beginning on May 22, 2009 and ending on May 27, 2009, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 6 days are excluded.

As such, the patent term adjustment is increased by 1888 (1469 examination delay + 825 B-delay (1918 over three years - 1087 overlap - 6 days which are excluded) - 406 applicant delay) days.

The portions of the decision that was mailed on September 7, 2010 which indicated that the period of exclusion is 33 days, and the patent term adjustment is increased by 1861 days, are **VACATED**.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, eight hundred and eighty-eight (1888) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,597,886 B2

DATED : October 6, 2009

DRAFT

INVENTOR(S) : Yu et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1443 days

Delete the phrase "by 1443 days" and insert – by 1888 days--